

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MPD ACCESSORIES B.V.

Plaintiff,

v.

URBAN OUTFITTERS, INC.

and

GMA ACCESSORIES INC. d/b/a CAPELLI  
NEW YORK

and

ABC CORPS 1-5

Defendants.

Case No. 12-CV-6501 (LTS)(KNF)

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**LOCAL CIVIL RULE 56.1 STATEMENT**

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*Attorneys for Plaintiff MPD Accessories B.V.*

Plaintiff MPD Accessories B.V. ("MPD"), through their undersigned attorneys, Cozen O'Connor, respectfully submits this Local Civil Rule 56.1 Statement in support of its Motion for Summary Judgment:

LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS WITH NO GENUINE ISSUE

1. In consideration of payment of an invoice dated February 7, 2011, MPD acquired a stripe textile pattern with design number STNC8033 from Whiston & Wright, a textile design studio located in London, UK, and Whiston & Wright assigned same to MPD.

Evidence: Affidavit of Menno Menke dated October 21, 2013 ("Menke Aff."), at ¶ 2 and Exhibit A thereto (Assignment Agreement).

2. Using this textile pattern, MPD's designer, Corine Kamp, created a stripe design of brightly colored block stripes, variegated color combinations and bold and small stripes, interlinking horizontal and vertical stripes and parallel and perpendicular striping (the "Stripe Design") during March 2011 in Amsterdam, the Netherlands, which MPD produced a scarf from.

Evidence: Menke Aff. ¶ 3 and Exhibit B and Exhibit C thereto; Affidavit of Corine Kamp dated October 18, 2013 ("Kamp Aff.") and Exhibit A and Exhibit B thereto.

3. Corine Kamp is an employee of MPD Accessories, B.V., and has been since on or around October 1, 2007.

Evidence: Menke Aff. ¶ 4 and Exhibit D thereto; Kamp Aff. ¶ 1.

4. The first samples of the Stripe Design were manufactured for MPD in China by

Hangzhou Tongshi Silk Co. Ltd. (“Hangzhou Tongshi Silk Co”), and approved by MPD on May 6, 2011. The Stripe Design was originally published and distributed in Europe by MPD during or around May of 2011. Neither MPD, nor any of its licensees, has published the Stripe Design in the United States.

Evidence: Menke Aff. ¶¶ 5-7 and Exhibits E, F, G, and H thereto.

5. No license to the Stripe Design has been granted by MPD to Defendants Urban Outfitters, Inc. (“Urban Outfitters”), GMA Accessories Inc., d/b/a Capelli New York (“Capelli”), or any other U.S. party.

Evidence: Menke Aff. ¶ 8; Preliminary Pre-trial Statement (DE 19), at section (c).

6. Another design belonging to MPD is the oblong double fact lace-wool star scarf (the “Star Design”), which was created by MPD’s designer in the Netherlands, Corine Kamp, during March 2011 in Amsterdam, the Netherlands.

Evidence: Menke Aff. ¶ 10 and Exhibit J and Exhibit K thereto; Kamp Aff. ¶ 3 and Exhibit C and Exhibit D thereto.

7. The first samples of the Star Design were manufactured for MPD in China by Hangzhou Tongshi Silk Co., and approved by MPD on April 20, 2011. The Star Design was originally published and distributed in Europe by MPD during or around April 2011. Neither MPD, nor any of its licensees, has published the Star Design in the United States.

Evidence: Menke Aff. ¶¶ 11-13 and Exhibits L, M, N, O, and P thereto.

8. No license to the Star Design has been granted to Urban Outfitters, Capelli, or any other U.S. party.

Evidence: Menke Aff. ¶ 14; Preliminary Pre-trial Statement (DE 19), at section (c).

9. MPD has sold and exported scarves to a distributor in Florida, Mytulus LLC, for around one year, and in the U.S. market, as well as abroad, MPD's scarves demand a higher price-point, as compared to mass produced/distributed scarves, because of the unique designs and limited availability of the MPD scarves.

Evidence: Menke Aff. ¶ 20 and Exhibit U thereto.

10. MPD became aware in May and June 2012 that Defendant were selling infringing scarves, and on June 20, 2012, MPD purchased a scarf with a textile design identical, or at least nearly identical, to the Stripe Design from Urban Outfitters online ([www.urbanoutfitters.com](http://www.urbanoutfitters.com)) for a purchase price of \$24.00, Item # 24894511.

Evidence: Menke Aff. ¶ 15-16 and Exhibit Q thereto.

11. During May 2012, MPD sent Urban Outfitters UK Ltd. a cease and desist letter relating to Urban Outfitters Item # 24894511 and follow up letters regarding same to Urban Outfitter's subsidiary in the United Kingdom, Urban Outfitters UK Ltd.

Evidence: Menke Aff. ¶ 9 and Exhibit I thereto.

12. During May 2012, GMA Accessories was informed that Urban Outfitters UK Ltd.

had received a cease and desist letter related to sales of Urban Outfitters Item # 24894511.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 14, 2013 Gusy Declaration Exhibits A and B, Request No. 10).

13. On June 21, 2012, MPD purchased a scarf with a textile design identical, or at least nearly identical, to the Star Design from Urban Outfitters online ([www.urbanoutfitters.com](http://www.urbanoutfitters.com)) for a purchase price of \$24.00, Item # 25073586.

Evidence: Menke Aff. ¶ 17 and Exhibit R thereto.

14. On July 6, 2012, MPD instructed its attorneys to send, and its attorney sent, a letter to Urban Outfitters in response to previous communications, and included a cease and desist with regard to the Star Design.

Evidence: Menke Aff. ¶ 18 and Exhibit S thereto.

15. On July 18, 2012, MPD, through its attorneys, purchased from Urban Outfitters' retail store located at 521 Fifth Avenue, New York, New York, USA (i) a scarf with a textile design identical, or at least nearly identical, to the Stripe Design for a purchase price of \$24.00, item # 24894511 and (ii) a scarf with a textile design identical, or at least nearly identical, to the Star Design for a purchase price of \$24.00, Item # 25073586.

Evidence: Affidavit of Carl M.R. van der Zandt dated August 23, 2012 (DE 12), at ¶ 2 and Exhibit A.

16. On August 24, 2013, MPD instructed its attorneys to send, and its attorney sent,

cease and desist letters to Urban Outfitters and Capelli.

Evidence: Menke Aff. ¶ 19 and Exhibit T thereto.

17. On September 27, 2012, 6:15 p.m., MPD, through its attorneys, purchased from Defendant Urban Outfitters, Inc.'s retail store located at 521 Fifth Avenue, New York, New York, USA a scarf with a textile design identical, or at least nearly identical, to the Star Design for a purchase price of \$9.99, Item # 25073586.

Evidence: Further Affidavit of Carl M.R. van der Zandt dated October 1, 2012 (DE 13), at ¶ 2 and Exhibit A.

18. On October 1, 2012, MPD, through its attorneys, purchased from Defendant GMA Accessories Inc. d/b/a Cappelli New York's retail store located at 475 Fifth Avenue, New York, New York, USA a scarf with a textile design identical, or at least nearly identical, to the Star Design for a purchase price of \$19.95, Item # SCF-6567.

Evidence: Further Affidavit of Carl M.R. van der Zandt dated October 1, 2012 (DE 13), at ¶ 3 and Exhibit B.

19. In the calendar years 2011 and 2012, Capelli purchased a total of 5,052 scarves having the Style Number SCF-6259 with the Stripe Design from Hangzhou Tongshi Silk Co Ltd., whereas 3,000 were purchased at \$1.549 per unit and 2,052 were purchased at \$1.452 per unit, an average of \$1.509 per unit. Capelli sold scarves having the Style Number SCF-6259 with the Stripe Design to Urban Outfitters UK Ltd., Urban Outfitters – Direct LLC, GLG Investment Group, Inc. and Defendant Urban Outfitters, Inc. in a total quantity of 4,008 for a total amount of

\$17,614. Urban Outfitters, Inc. purchased a total of 3,200 scarves with the Stripe Design from Capelli.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Requests Nos. 18, 19 and 20); GMA Accessories Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Purchase Orders #634321 and #636785 (February 11, 2013 Gusy Declaration (DE 41) Exhibit D); Declaration of George Altris dated February 8, 2013, at ¶5; GMA Accessories Inc. Second Supplemental Response to Plaintiff's First Set of Interrogatories dated November 20, 2012, pgs. 4, 5 (February 11, 2013 Gusy Declaration (DE 41) Exhibit C); Urban Outfitters Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Purchase Orders #0000168363 and #0000168364 (February 11, 2013 (DE 41) Gusy Declaration Exhibit B).

20. In the calendar years 2011 and 2012, Capelli purchased a total of 5,259 scarves having the Style Number SCF-6567 with the Star Design from Hangzhou Tongshi Silk Co Ltd., whereas 5,059 scarves were purchased at \$2.10 per unit and 200 were purchased at \$1.549 per unit, an average of \$2.079 per unit. In the calendar year 2012, Capelli sold scarves having the Style Number SCF-6567 with the Star Design to Urban Outfitters – Direct LLC and Defendant Urban Outfitters, Inc. in a total quantity of 5,083 for a total amount of \$24,496. Capelli provided a total of 24 scarves with the Star Design to its retail store. In its store, Capelli sold 20 units of the SCF-6567 scarves at retail for a price of \$19.95 per unit realizing an additional total retail sale price of \$399. Urban Outfitters, Inc. purchased a total of 4,859 scarves with the Star Design from Capelli.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Requests Nos. 21, 22 and 23); GMA Accessories Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Purchase Orders #636786, #637271, #637273, #637275, #637276 (February 11, 2013 Gusy Declaration (DE 41) Exhibit D); Declaration of George Altris dated February 8, 2013, at ¶4; GMA Accessories Inc. Second Supplemental Response to Plaintiff's First Set of Interrogatories dated November 20, 2012, pgs. 5-6 (February 11, 2013 Gusy Declaration (DE 41) Exhibit C); Urban Outfitters Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Purchase Orders #0000174987 through #0000174990 (February 11, 2013 Gusy Declaration (DE 41) Exhibit B).

21. Defendant Urban Outfitters sold goods bearing Urban Outfitters Item #24894511 with the Stripe Design and Item #25073586 with the Star Design in a subset of the 177 retail locations bearing the trade name "Urban Outfitters" that are owned and operated by Defendant Urban Outfitters and though the website [www.urbanoutfitters.com](http://www.urbanoutfitters.com) that is owned and operated by Defendant Urban Outfitters.

Evidence: Urban Outfitters Inc. Supplemental Response to Plaintiff's First Set of Interrogatories dated November 29, 2012, pg. 5 (February 11, 2013 Gusy Declaration (DE 41) Exhibit A).

22. In calendar year 2012, Defendant Urban Outfitters sold 2,852 units of the Urban Outfitters Item #24894511 with the Stripe Design for a total retail sales price of \$42,118. Urban Outfitters purchased the 2,852 units of the Urban Outfitters Item #24894511 with the Stripe Design for a price of \$4.75 a piece, totaling \$13,547 cost of goods sold.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Requests Nos. 1 and 2); Declaration of Frank Conforti dated February 8, 2013, at ¶6; Urban Outfitters Inc. Supplemental Response to Plaintiff's First Set of Interrogatories dated November 29, 2012, pg. 4 (February 11, 2013 Gusy Declaration (DE 41) Exhibit A); Urban Outfitters Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Chart entitled "Retail + Direct" and Urban Outfitters' Purchase Orders #0000168363 and #0000168364 (February 11, 2013 Gusy Declaration (DE 41) Exhibit B).

23. In calendar year 2012, Defendant Urban Outfitters sold 1,986 units of the Urban Outfitters Item #25073586 with the Star Design for a total retail sales price of \$42,404. Urban Outfitters purchased the 1,986 units of the Urban Outfitters Item #25073586 with the Star Design for a price of \$4.83 a piece, totaling \$9,592.38 cost of goods sold.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Requests Nos. 15 and 16); Declaration of Frank Conforti dated February 8, 2013, at ¶6; Urban Outfitters Inc. Supplemental Response to Plaintiff's First Set of Interrogatories dated November 29, 2012, pgs. 4-5 (February 11, 2013 Gusy Declaration (DE 41) Exhibit A); Urban Outfitters Inc. Second Supplemental Response to Plaintiff's First Request to Defendants for Production of Documents, Chart entitled "Retail + Direct" and Urban Outfitters' Purchase Orders #0000174987 through #0000174990 (February 11, 2013 Gusy Declaration (DE 41) Exhibit B).

24. Urban Outfitters Item # 24894511 is the same design as GMA Accessories Item

No. SCF-6259.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Request No. 3).

25. Urban Outfitters Item # 25073586 is the same design as GMA Accessories Item No. SCF-6567.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Request No. 17).

26. GMA Accessories purchased Item No. SCF-6259 and Item No. SCF-6567 from Hangzhou Tongshi Silk Co. Ltd., the same factory where MPD Accessories had the Stripe Design and the Star Design manufactured.

Evidence: Defendants' Response to Plaintiff's First Requests for Admission (October 25, 2013 Gusy Declaration Exhibits A and B, Request Nos. 20 and 23); Menke Aff. ¶¶ 5-6, 11-12 and Exhibit G and O thereto.

Dated: New York, New York  
October 25, 2013

COZEN O'CONNOR

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